UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: **PATRIOT COAL CORPORATION, *et al.*,** **Debtors.**	**Chapter 11** **Case No. 12-51502-659** **(Jointly Administered)**
PATRIOT COAL CORPORATION and HERITAGE COAL COMPANY, **Plaintiffs,** **-against-** **PEABODY HOLDING COMPANY, LLC and PEABODY ENERGY CORPORATION,** **Defendants.**	**Adversary Proceeding** **No. 13-04067-659** **Re: ECF No. 6** **Objection Deadline:** **April 22, 2013 at 4:00 p.m.** **(prevailing Central Time)** **Hearing Date (if necessary):** **April 29, 2013 at 10:00 a.m.** **(prevailing Central Time)** **Hearing Location:** **Courtroom 7 North**

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs Patriot Coal Corporation, as debtor-in-possession ("**Patriot**"), and Heritage Coal Company, formerly known as Peabody Coal Company, LLC ("**Heritage**," and, together with Patriot and its debtor-subsidiaries, the "**Debtors**"), pursuant to Federal Rule of Civil Procedure 56, respectfully submit this memorandum in support of their motion for summary judgment on their claims for declaratory judgment.

PRELIMINARY STATEMENT

The issue raised in this declaratory judgment action is whether Peabody Holding Company, LLC ("**Peabody Holding**") and Peabody Energy Corporation ("**Peabody Energy**," and, together with Peabody Holding, "**Peabody**") may take advantage of the Debtors' financial distress to better their own balance sheets. Under the NBCWA Individual Employer Plan Liabilities Assumption Agreement, dated October 22, 2007, entered into by Patriot, Heritage, Peabody Holding, and Peabody Energy (the "**NBCWA Liabilities Assumption Agreement**") (Ex. A), Peabody agreed to pay for approximately $600 million in healthcare benefits of certain retirees of Heritage and their eligible dependents (the "**Assumed Retirees**"). Moreover, Peabody Holding promised the United Mine Workers of America (the "**UMWA**") in a separate agreement (the "**Acknowledgement and Assent**") (Ex. B) that it would pay for the benefits of the Assumed Retirees. Notwithstanding these clear, unambiguous contractual obligations, Peabody—a financially healthy company worth billions—has declared that it will attempt to use the Debtors' bankruptcy proceedings to reduce or eliminate its own obligations to thousands of Assumed Retirees. (Ex. C.)

Peabody's purported justification for ceasing to pay for these healthcare benefits is its flawed construction of the NBCWA Liabilities Assumption Agreement. That agreement primarily obligates Peabody to pay for the healthcare benefits of the Assumed Retirees, subject to a single proviso. If there is a "successor . . . labor contract" between the UMWA and Heritage

with respect to the Assumed Retirees, then the level of benefits for which Peabody is obligated to pay at that time will be measured based on the benefits provided in "any future UMWA labor agreement with Eastern Associated Coal, LLC" ("**Eastern Associated**"), another Patriot debtor. (Ex. A § 1(d).) Based on its public statements, Peabody appears to believe that any modifications that the bankruptcy Debtors are able to obtain through their March 14, 2013 Motion to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 of the Bankruptcy Code [ECF No. 3214] (the "**1114 Motion**") are the same thing as the "successor . . . labor contract" that would trigger this provision. Under this tortured reading of the contract, Peabody would measure its own obligations to pay for the healthcare of the Assumed Retirees against relief that debtor-subsidiary Eastern Associated was able to obtain only as a result of its bankruptcy.

Peabody's position is as plainly wrong as it is manifestly unjust. As a matter of contract interpretation, there is simply no basis to treat a modification of retiree benefits pursuant to Section 1114 as a "successor labor contract." Peabody, as the drafter of the NBCWA Liabilities Assumption Agreement, had every opportunity to insert into the contract a provision addressing its obligations in the event of a Patriot or Heritage bankruptcy, but it did not. Moreover, it would be grossly inequitable to allow Peabody to reap a windfall worth hundreds of millions of dollars as a result of the Debtors' bankruptcy.

While it is difficult to believe that Peabody would even take such a contrary position, Peabody has left no doubt that it will take exactly this step if given the opportunity. In a press release issued within hours of this lawsuit, Peabody declared that it would indeed reduce the benefits for the Assumed Retirees to "lower levels." The issue is thus ripe and urgent.

Without a declaration that Peabody's obligations to the Assumed Retirees would not be altered by the relief the Debtors seek pursuant to Section 1114, the Debtors will be forced to include these retirees in their 1114 Motion, because if Peabody fails to pay for these benefits then the obligation would fall to Heritage. As set forth in the 1114 Motion, the Debtors cannot afford to pay for the healthcare of *any* retirees, let alone retirees that Peabody has been paying for since Patriot's creation. The declaratory judgment action is thus inextricably linked with the Debtors' 1114 Motion, and the two should be decided together so that thousands of individuals will be spared the effect of the Debtors' bankruptcy.

STATEMENT OF FACTS

A. Peabody Enters into the Acknowledgement and Assent with the UMWA

For decades prior to 2007, Peabody owned a number of Appalachian and Illinois Basin mining operations. (Ex. D at 1.) Unlike the majority of Peabody's assets in the western United States and abroad, these eastern operations were heavily staffed with miners represented by the UMWA. (Ex. E at 18, 35; Ex. D at 2-3.) Over the years of Peabody's ownership, thousands of unionized miners retired from these operations, obliging Peabody to provide substantial healthcare and pension benefits to UMWA retirees. (Decl. of Bennett K. Hatfield in Supp. of the Debtors' Mot. to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 [ECF No. 3222] ("**Hatfield Decl.**") ¶ 28.)

The benefits received by UMWA retirees are determined by individual employer plans in accordance with UMWA labor agreements. The National Bituminous Coal Wage Agreement (the "**NBCWA**") is the periodically renegotiated labor agreement between the UMWA and the Bituminous Coal Operators' Association; typically, all other coal employers with UMWA-represented operations are signatory to "me too" agreements that bind them to the terms of the

NBCWA or to individually negotiated variants thereof.[1] (Decl. of Mark N. Schroeder Pursuant to Local Bankr. Rule 1007-2, dated July 9, 2012 [ECF No. 4] ("**Schroeder Decl.**") ¶¶ 34-35.)

As the benefits Peabody owed to its UMWA retirees grew, Peabody decided to divest itself of its union operations though the spinoff of Patriot and other entities (the "**Spinoff**"), discussed more fully *infra*. Accordingly, in mid-2007, Peabody approached the UMWA to discuss and acquire the UMWA's consent to the transaction. The resulting Acknowledgement and Assent—entered into by Peabody Holding, the UMWA and, for limited purposes, Heritage on August 13 and 14, 2007—memorializes Peabody's obligations to the Assumed Retirees following the Spinoff. (Ex. B.)

In particular, the agreement states that Heritage, "a signatory to a 'me too' labor contract ('[Heritage] Labor Contract') that incorporates by reference Article XX of the National Bituminous Coal Wage Agreement of 2007 ('2007 NBCWA')," would be transferred to Patriot in connection with the Spinoff. (Id. ¶ A.1.) Further, Peabody promised that,

> At the completion of the spin-off of Patriot, [Peabody Holding] will enter into an agreement ('NBCWA Liability Assumption Agreement') with [Heritage] and/or Patriot pursuant to which [Peabody Holding] will agree to be primarily obligated to pay for benefits of retirees of [Heritage] and such retirees' eligible dependents under the terms of an employee welfare plan maintained by [Heritage] pursuant to Article XX of the [Heritage] Labor Contract . . . or any [Heritage] successor labor agreement . . . .

(Id. ¶ A.2.) For its part, the UMWA, "[i]n recognition of the benefits to UMWA retirees and their eligible dependents from an agreement between [Peabody Holding] and [Heritage] through which [Peabody Holding] would undertake the assumption of liabilities as described above," assented to the entry of such an agreement, i.e., the NBCWA Liabilities Assumption Agreement.

[1] The NBCWA and, accordingly, Heritage's and Eastern Associated's "me too" agreements were last renegotiated in 2011. (See Ex. F at 19.)

(Id. ¶ B.) The Acknowledgment and Assent is thus an agreement between Peabody and the UMWA for Peabody to be liable for the healthcare provided in Heritage's existing "me too" labor contract or any successor labor contract.

B. Peabody Spins Off Patriot

Shortly thereafter, on October 31, 2007, Peabody completed the Spinoff contemplated by the Acknowledgement and Assent. (Ex. E at 3.) Peabody had consolidated, among other assets, its operations in the Appalachia and Illinois Basin regions with UMWA-represented labor within Patriot—then a subsidiary of Peabody—and then distributed the common shares of Patriot to Peabody Energy's stockholders. (Ex. D at 1-3; Ex. E at 3.) A number of companies included in the Spinoff—including Heritage and Eastern Associated, both of which are still Patriot subsidiaries—carried substantial liabilities attributable to their retiree healthcare obligations under the NBCWA. (See Hatfield Decl. ¶¶ 28, 30.)

C. Peabody Enters into the NBCWA Liabilities Assumption Agreement

To reduce the liabilities of the newly formed Patriot enterprise, Peabody and Patriot entered into several agreements effective as of the date of the Spinoff, each drafted by counsel to Peabody, including the NBCWA Liabilities Assumption Agreement.[2] That agreement acknowledges that Heritage "has an obligation to provide retiree healthcare pursuant to its 'me too' labor contract which incorporates by reference Article XX of the NBCWA," and it proclaims that it is the product of the parties' "desire that [Heritage] continue to provide the

[2] Of note, Peabody and Patriot also entered into the Section 9711 Coal Act Liabilities Assumption Agreement (Ex. G), and Peabody, Patriot, and Heritage entered into the Salaried Employee Liabilities Assumption Agreement. (Ex. H.) Under the former, Peabody Holding assumed liabilities associated with retiree healthcare benefits under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9711, and, under the latter, Peabody Holding assumed the retiree healthcare liabilities of certain former salaried employees of Heritage. Neither agreement contains a provision analogous to the one at issue in this action.

retiree healthcare required by Article XX of the NBCWA (or any successor [Heritage] labor contract)." (Ex. A, Recitals 3, 4.) To achieve that goal, Peabody Holding "has agreed to assume the liabilities of [Heritage] for provision of healthcare pursuant to Article XX of the NBCWA (or any successor [Heritage] labor contract) to [the Assumed Retirees] to the extent expressly set forth in this agreement" (the "**Assumed Liabilities**"). (Id., Recital 5.)

As it promised it would in the Acknowledgement and Assent, Peabody Holding became the primary obligor for the benefits of the Assumed Retirees by "assum[ing], and agree[ing] to pay and discharge when due in accordance herewith, the [Assumed Liabilities]." (Id. § 2(a).) The NBCWA Liabilities Assumption Agreement defines the Assumed Liabilities by reference to the benefits owed to the Assumed Retirees under the "NBCWA Individual Employer Plan," which is "a plan for the provision of healthcare benefits to retirees of [Heritage] and their eligible dependents maintained by [Heritage] pursuant to Article XX of the NBCWA." (Id. § 1(c).)

Acknowledging that future NBCWA and "me too" agreements may provide for different levels of benefits than did the 2007 NBCWA, the NBCWA Liabilities Assumption Agreement provides that Peabody Holding has assumed liability for those benefits as well: "Changes to benefit levels, cost containment programs, plan design or other such modifications contained in [Heritage's] future UMWA labor agreements that are applicable to the retirees and eligible dependents subject to this Agreement shall be included for the purposes of the definition of [the Assumed Liabilities]." (Id. § 1(d).) Such modifications will be reflected in the Assumed Liabilities "*provided* that, for purposes of any successor [Heritage] labor contract, [the Assumed Liabilities] shall be based on benefits that are the lesser of (i) benefits provided in any future UMWA labor agreement with [Eastern Associated] and (ii) benefits provided in any future NBCWA labor agreement or any successor labor agreement and offered to [Eastern Associated],

or which [Eastern Associated] had the opportunity to sign." (Id.) Under the plain language of the agreement, the Assumed Liabilities are to be determined by reference to the lesser benefits of the UMWA labor contract negotiated with either Heritage or Eastern Associated.

D. Patriot and Heritage File for Bankruptcy Protection

On July 9, 2012, plagued by declining coal demand, increasing regulations, and staggering labor costs, the Debtors commenced voluntary proceedings under chapter 11 of the Bankruptcy Code. (Schroeder Decl. ¶¶ 21-39.) In order to be able to successfully emerge from bankruptcy and survive in an ever-more competitive industry, the Debtors have sought to modify the healthcare benefits provided for under their collective bargaining agreements pursuant to the unique process set forth in 11 U.S.C. § 1114.

Those of the Debtors who are responsible for benefits pursuant to their NBCWA "me too" agreements (the "**Obligor Companies**"), including Heritage and Eastern Associated, are simply unable to afford those benefits any longer. The 1114 Motion therefore proposes to transition responsibility for such benefits into a trust structured as a voluntary employee beneficiary association that would be funded through an unsecured claim that could monetize for significant value, a $15 million initial cash contribution, and a profit-sharing mechanism. (Decl. of Gregory B. Robertson in Supp. of the Debtors' Mot. to Reject Collective Bargaining Agreements and to Modify Retiree Benefits Pursuant to 11 U.S.C. §§ 1113, 1114 [ECF No. 3220], Ex. 1 ("**1114 Proposal**") ¶¶ 3-5, 8.) Unless the Court declares that Peabody's obligations to the Assumed Retirees would be unaffected by any relief the Debtors are able to obtain pursuant to Section 1114, the Debtors have no choice but to include the Assumed Retirees in that relief. If Peabody is permitted to reduce or eliminate its Assumed Liabilities, those obligations would be the responsibility of Heritage. (Hatfield Decl. ¶ 33.) Since Patriot cannot

afford to pay for the healthcare of the retirees that it has been paying for since the Spinoff, let alone thousands of additional Assumed Retirees, Patriot would require the same relief with respect to this population as it needs for all of the company's other retirees. If the Court rules in favor of Patriot and Heritage in this declaratory judgment action, the 1114 Motion would not apply to the Assumed Retirees, and their retiree healthcare would continue to be paid for by Peabody, as it has been for the six years since the Spinoff. (1114 Proposal ¶ 6.)

Peabody has left no doubt that it will seek to reduce or eliminate the benefits for the Assumed Retirees if the 1114 Motion is granted. Mere hours after the Debtors filed the 1114 Motion and the complaint in this action, Peabody issued a press release proclaiming that, should the bankrupt Obligor Companies obtain relief pursuant to the 1114 Motion, Peabody—the largest private-sector coal company in the world—would seek to reduce or eliminate benefits for the Assumed Retirees. (Ex. C.)

APPLICABLE STANDARD AND GOVERNING LAW

A. Summary Judgment Standard

Summary judgment is appropriate when "the evidence, viewed in the light most favorable to the nonmoving party, shows that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law." Cordry v. Vanderbilt Mortgage & Fin., Inc., 445 F.3d 1106, 1109-10 (8th Cir. 2006). When the issues under dispute in the motion "are primarily legal rather than factual, summary judgment is particularly appropriate." Ballard v. State Farm Mutual Auto. Ins. Co., No. 4:11-CV-74 CAS, 2012 U.S. Dist. LEXIS 44841, at *2 (E.D. Mo. Mar. 30, 2012) (quoting Cearley v. Gen. Am. Transp. Corp., 186 F.3d 887, 889 (8th Cir. 1999)). The interpretation "of an unambiguous contract presents a question of law appropriate for summary judgment." McCormack v. Citibank, N.A., 100 F.3d 532, 538 (8th Cir. 1996).

When, as here, the plain language of an agreement speaks for itself, summary judgment may be granted "at any time, even as early as the commencement of the action," that is, prior to the submission of a responsive pleading. Fed. R. Civ. P. 56, Advisory Comm. Notes; see also, e.g., HS Res., Inc. v. Wingate, 327 F.3d 432, 440 (5th Cir. 2003) (explaining that "an answer is not a prerequisite to the consideration of a motion for summary judgment" and affirming pre-answer grant of summary judgment for plaintiff on interpretation of an unambiguous contract); Portside Growth & Opportunity Fund v. Gigabeam Corp., 557 F. Supp. 2d 427 (S.D.N.Y. 2008) (granting in part a plaintiff's pre-answer motion for summary judgment on an unambiguous contract). Accordingly, even though Peabody has not yet answered the complaint or moved to dismiss, summary judgment can and should be granted.

B. Governing Law

The NBCWA Liabilities Assumption Agreement is governed by Delaware law. (Ex. A § 19.) However, the principles guiding the interpretation of that document are so basic, and its language so plain, that it is of no moment which state's laws are utilized, and the result would be the same under Missouri law (or the law of many other states). Under both Delaware and Missouri law, the interpretation of an unambiguous contract is a question of law to be decided by the court. See Matrix Grp. Ltd. v. Rawlings Sporting Goods Co., 477 F.3d 583, 589 (8th Cir. 2007) (applying Delaware law); LeJeune v. Bliss-Salem, Inc., 85 F.3d 1069, 1073 (3d Cir. 1996) (same); Shaw Hofstra & Assocs. v. Ladco Dev., Inc., 673 F.3d 819, 825 (8th Cir. 2012) (applying Missouri law); Madsen v. Audrain Health Care, Inc., 297 F.3d 694, 698 (8th Cir. 2002) (same).

This dispute presents a simple matter of contract interpretation, where the Court must examine the "plain, ordinary meaning" of the terms of the NBCWA Liabilities Assumption Agreement. Alta Berkeley VI C.V. v. Omneon, Inc., 41 A.3d 381, 385 (Del. 2012). When, as

here, "the language of a contract is plain and unambiguous, the intent of the parties expressed in that language is binding." Sun-Times Media Grp., Inc. v. Black, 954 A.2d 380, 389 (Del. Ch. 2008); see also id. at 394 ("[W]ords are to be given their common meaning within the setting in which they are employed."); Land-Lock, LLC v. Paradise Prop., LLC, 963 A.2d 139, 2008 Del. LEXIS 601, at *10 (Del. Dec. 23, 2008) ("clear and unambiguous terms are interpreted according to their ordinary and usual meaning" to arrive at "the objective intent of the parties" (internal quotation marks omitted)). In such a case, the Court should simply "apply the meaning that would be ascribed to the language by a reasonable third party." Comrie v. Enterasys Networks, Inc., 837 A.2d 1, 13 (Del. Ch. 2003); see also Kirby v. Kirby, C.A. No. 8604, 1987 Del. Ch. LEXIS 463, at *10 (Del. Ch. July 29, 1987) (unambiguous provisions "must be applied as written").

Although not strictly necessary given the clarity of the pertinent clause of the NBCWA Liabilities Assumption Agreement, the Acknowledgement and Assent is highly relevant and instructive. For purposes of applying the terms of a contract, agreements that "relate to the same course of commercial activity" should "be read together and harmonized."[3] Martin Marietta Materials, Inc. v. Vulcan Materials Co., 56 A.3d 1072, 1120 (Del. Ch. 2012); accord In re Nw. Corp., 313 B.R. 595, 601 (Bankr. D. Del. 2004).

[3] The Acknowledgement and Assent can be used for this purpose without running afoul of the parol evidence rule. See Crown Books Corp. v. Bookstop, Inc., C.A. No. 11255, 1990 Del. Ch. LEXIS 25, at *19 (Del. Ch. Feb. 28, 1990) (while finding "no ambiguity" in the operative document, construing it in the context of "related" contracts without "referring to 'parol evidence' in any respect"). The agreements are simply read together; they are not integrated. See Elliott v. Richter, 496 S.W.2d 860, 864 (Mo. 1973) ("[E]ven though several instruments relating to the same subject and executed at the same time should be construed together in order to ascertain the intention of the parties, it does not necessarily follow that those instruments constitute one contract."); accord Richard A. Lord, 11 Williston on Contracts § 30:26 (4th ed. 1990).

ARGUMENT

POINT I

PEABODY IS PRIMARILY OBLIGATED FOR THE ASSUMED LIABILITIES

Peabody is primarily obligated for the Assumed Liabilities. Through the Spinoff, it assumed responsibility for paying for the benefits of the Assumed Retirees.

The agreements are unambiguous regarding Peabody's obligation to pay for the Assumed Liabilities. The Acknowledgement and Assent states simply: "[Peabody Holding] will agree to be primarily obligated" for the Assumed Liabilities. (Ex. B ¶ A.2.) The NBCWA Liabilities Assumption Agreement effectuates this promise by providing that Peabody Holding "assumes" the liabilities associated with the Assumed Retirees. (Ex. A § 2(a); see also id., Recital 5.) Having become the primary obligor of the Assumed Liabilities, Peabody was to make payment for those liabilities to the third-party administrator, which "deliver[s] each invoice with respect to the [Assumed Liabilities] directly to [Peabody Holding]." (Id. § 2(b).)

There can be no dispute that Peabody has assumed the position of primary obligor with respect to the Assumed Liabilities. Peabody cannot evade that fact, just as it cannot use the Debtors' bankruptcy to evade its Assumed Liabilities.

POINT II

PATRIOT'S SECTION 1114 RELIEF WILL NOT REDUCE THE ASSUMED LIABILITIES

The NBCWA Liabilities Assumption Agreement provides unambiguously that the Assumed Liabilities will be governed by Heritage's employer plan pursuant to the NBCWA or by a "successor [Heritage] labor contract." No relief the Debtors may obtain through their 1114

Motion or a negotiated resolution of that motion constitutes a successor labor contract, and, accordingly, the Assumed Liabilities will not be changed by this process.

A. The Assumed Liabilities Can Be Reduced Only by a "Successor Labor Contract"

Under the NBCWA Liabilities Assumption Agreement, the Assumed Liabilities can be reduced only when there is a "successor [Heritage] labor contract." (Ex. A § 1(d).) The operation of Section 1(d) is clear: The parties agreed that Peabody would pay for benefit changes contained in Heritage's future labor agreements with the UMWA that were applicable to the Assumed Retirees,[4] unless those benefits were greater than those contained in a future Eastern Associated labor contract with the UMWA or NBCWA. These documents are linked because, upon the periodic renegotiation of the NBCWA, Heritage's and Eastern Associated's "me too" agreements also need to be renegotiated.[5]

The NBCWA Liabilities Assumption Agreement therefore contemplates adjustment of the Assumed Liabilities only upon Heritage negotiating a new "labor contract" with the UMWA in connection with a new NBCWA. This is precisely what the Acknowledgement and Assent—which takes as its starting premise that Heritage is signatory to a "labor contract"—had anticipated the NBCWA Liabilities Assumption Agreement would do. See Martin Marietta Materials, 56 A.3d at 1120 (related agreements should be harmonized). At the outset, the Acknowledgement and Assent establishes that Heritage is subject to the terms of Article XX of

[4] Under the terms of the 1114 Motion, unless the Court rules against Patriot and Heritage in this action, the benefits of the Assumed Retirees will not be modified. A favorable ruling simply presents no issue as to the operation of Section 1(d) because the NBCWA Liabilities Assumption Agreement makes the modification of the Assumed Retirees' benefits a threshold issue before the Assumed Liabilities may themselves be adjusted.

[5] The last NBCWA was entered into in 2011. Accordingly, the second disjunct of the last clause in Section 1(d) is not at issue in this action, although it does further demonstrate that the agreement contemplates only benefit adjustments in connection with renegotiated NBCWA and "me too" agreements.

the NBCWA because it is "a signatory to a 'me too' labor contract," which document it then defines as the "[Heritage] Labor Contract." (Ex. B ¶ A.1.) It continues by setting forth that Peabody Holding is to be "primarily obligated to pay for benefits," not just pursuant to the current "[Heritage] Labor Contract," but also "any [Heritage] successor labor agreement." (Id. ¶ A.2.)

The NBCWA Liabilities Assumption Agreement is even clearer that "labor contracts" are those "me too" agreements negotiated alongside the NBCWA.[6] The parties set forth their intention in so many words: "[T]he parties desire that [Heritage] continue to provide the healthcare *required by Article XX of the NBCWA (or any successor [Heritage] labor contract).*" (Ex. A, Recital 4 (emphasis added).)[7] The express focus of the agreement was on the healthcare benefits provided by the NBCWA and Heritage's "me too" agreements in connection therewith. (Id., Recital 3 (Heritage "has an obligation to provide retiree healthcare pursuant to its 'me too' labor contract which incorporates by reference Article XX of the NBCWA").) Accordingly, Peabody Holding "has agreed to assume the liabilities of [Heritage] for provision of healthcare pursuant to Article XX of the NBCWA (or any successor [Heritage] labor contract)." (Id., Recital 5.)

Thus, when the NBCWA Liabilities Assumption Agreement speaks of "[Heritage's] future UMWA labor agreements" and, in the next clause, "any successor [Heritage] labor contract," it is referring to those contracts periodically negotiated by the UMWA with signatories to NBCWA "me too" agreements. See Comrie, 837 A.2d at 13.

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[6] The name of the agreement itself—the "NBCWA Individual Employer Plan Liabilities Assumption Agreement"—makes obvious that Peabody had assumed those liabilities stemming from agreements entered into pursuant to the NBCWA.

[7] Recitals are an "obvious source" for determining contractual intent "because it is there that the parties express[] their purposes for executing the [a]greement." Citadel Holding Corp. v. Roven, 603 A.2d 818, 822-23 (Del. 1992); see also Jim Bouton Corp. v. Wm. Wrigley Jr. Co., 902 F.2d 1074, 1077 (2d Cir. 1990) (recitals "furnish a background in relation to which the meaning and intent of the operative provisions can be determined").

B. The Section 1114 Motion Will Not Result in a "Successor Labor Contract"

No relief the Debtors obtain through bankruptcy can possibly constitute a "labor contract" as that term is used in the NBCWA Liabilities Assumption Agreement.[8] The parties "desire[d] that [Heritage] continue to provide the retiree healthcare required by Article XX of the NBCWA (or any successor [Heritage] labor contract)" (Ex. A, Recital 4), yet Peabody is now maneuvering to disrupt the provision of those benefits when neither the NBCWA nor any "me too" labor contract has been renegotiated.

A facial reading of the NBCWA Liabilities Assumption Agreement makes plain that the "successor labor contract" contemplated therein is a successor to the "me too" agreement Heritage had entered into in connection with the 2007 NBCWA. There is no indication that the parties ever contemplated the effect of a Patriot or Heritage bankruptcy on the Assumed Liabilities, and there is no provision for their treatment in that situation.[9] Accordingly, no part of the Section 1114 process can possibly create a labor contract as contemplated by the plain language of the agreement.

The only thing that can effect an alteration of the Assumed Liabilities is a "successor [Heritage] labor contract." The NBCWA was renegotiated in 2011, and Heritage signed a

[8] It is obvious that any court order issued as part of this process is not a contract of any kind, let alone a "labor contract." See, e.g., Boston Prop. Exch. Transfer Co. v. Iantosca, 834 F. Supp. 2d 4, 8 (D. Mass. 2011) ("A court order, is not, however, a contract."); Cavadi v. Bank of Am., N.A., No. 07-cv-224-PB, 2008 U.S. Dist. LEXIS 26389, at *7 (D.N.H. Apr. 1, 2008) ("[T]he court order was a court order, not a contract."); Black's Law Dictionary (9th ed. 2009) (defining "order" as "[a] command, direction, or instruction"). As discussed herein, however, *no* Section 1114 relief—be it a court order or a negotiated resolution—is a "labor contract."

[9] The absence of any analogous provision in the Salaried Employee Liabilities Assumption Agreement (Ex. H) drives the point home. Certain salaried retirees who were not assumed by Peabody may have their benefits reduced as part of the Patriot bankruptcy proceedings. (Debtors' Mot. for an Order Authorizing the Modification and Termination of Certain Non-Vested Benefits for Non-Union Retiree Benefit Participants Pursuant to 11 U.S.C. §§ 105(a) and 363(b) [ECF No. 3503] ¶ 2.) Peabody, however, must continue paying for the benefits of the salaried retirees for whom it assumed responsibility. (Id. ¶ 22.) There is no provision in the Salaried Employee Liabilities Assumption Agreement for a reduction in liabilities in bankruptcy because the parties never contemplated it. Those same parties likewise did not contemplate it in connection with the NBCWA Liabilities Assumption Agreement.

successor to its "me too" labor contract then. Those contracts are not due to be renegotiated again until 2016. (Ex. F at 19.) Accordingly, the Assumed Liabilities simply are not altered by any resolution of the Section 1114 process.

The language of the NBCWA Liabilities Assumption Agreement is unambiguous. There is no mechanism to adjust the Assumed Liabilities in connection with bankruptcy proceedings; there is only a means to ensure parity between the contemporaneously renegotiated NBCWA and Heritage and Eastern Associated "me too" labor contracts. Every instance of a "successor labor contract" or "future labor agreement" in the NBCWA Liabilities Assumption Agreement refers to a contract the UMWA has negotiated with a coal company pursuant to the terms of the NBCWA. Peabody Holding became primarily obligated for benefit changes in those UMWA contracts with Heritage, so long as Eastern Associated's "me too" agreements and the NBCWA had similar requirements. The parties' intent is clear from the ordinary meaning of the contract language and is memorialized a second time in the Acknowledgement and Assent. The language in those agreements simply does not reflect the circumstances before the Court. Should Peabody be permitted to use its strained interpretation of the plain language of the NBCWA Liabilities Assumption Agreement to free itself of its agreed-upon obligations, a multi-billion dollar company will be benefitting at the expense of a bankrupt company fighting for survival and thousands of retired miners and dependents to whom Peabody had promised its support.

CONCLUSION

For all of these reasons, Patriot and Heritage respectfully request that the Court grant their motion for summary judgment and enter a Judgment:

(1) declaring that Peabody Holding's obligations with respect to the healthcare benefits owed to the Assumed Retirees will not be affected by modification of Eastern Associated retirees' benefits under Section 1114; and

(2) awarding Patriot and Heritage such other and further relief that this Court deems just and proper.

Dated: New York, New York
April 5, 2013

Respectfully Submitted,

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re: **PATRIOT COAL CORPORATION, *et al.*,** **Debtors.**	**Chapter 11** **Case No. 12-51502-659** **(Jointly Administered)**
PATRIOT COAL CORPORATION and HERITAGE COAL COMPANY, **Plaintiffs,** **-against-** **PEABODY HOLDING COMPANY, LLC and PEABODY ENERGY CORPORATION,** **Defendants.**	**Adversary Proceeding** **No. 13-04067-659**

SUMMARY OF EXHIBITS

The following exhibits (the "**Exhibits**") referenced in the Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment (the "**Memorandum**") will be served on the Court, the office of the U.S. Trustee, counsel to the administrative agents for the Debtors' postpetition lenders, and Peabody[1] (collectively, the "**Service Parties**"). Copies of the Exhibits will be made available at

[1] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Memorandum.

www.patriotcaseinformation.com/exhibits.php and will be made available for inspection at the hearing.

Exhibit A:	A true and correct copy of the NBCWA Liabilities Assumption Agreement, dated October 22, 2007, entered into by Patriot, Heritage, Peabody Holding, and Peabody Energy.
Exhibit B:	A true and correct copy of the Acknowledgement and Assent, dated August 13 and 14, 2007, entered into by the UMWA, Peabody Holding, and, for limited purposes, Heritage.
Exhibit C:	A true and correct copy of the Statement of Peabody Energy Regarding Patriot Coal Claim, dated March 14, 2013.
Exhibit D:	A true and correct copy of excerpts of the Information Statement of Patriot Coal Corporation, dated October 22, 2007, attached as Exhibit Number 99.1 to the Form 8-K filed by Patriot with the Securities and Exchange Commission on October 24, 2007.
Exhibit E:	A true and correct copy of excerpts of the Form 10-K filed by Peabody with the Securities and Exchange Commission on February 28, 2008.
Exhibit F:	A true and correct copy of excerpts of the Form 10-K filed by Patriot with the Securities and Exchange Commission on February 22, 2013.
Exhibit G:	A true and correct copy of the Section 9711 Coal Act Liabilities Assumption Agreement, dated October 22, 2007, entered into by Patriot, Peabody Energy, and Peabody Holding.
Exhibit H:	A true and correct copy of the Salaried Employee Liabilities Assumption Agreement, dated October 22, 2007, entered into by Patriot, Heritage, Peabody Energy, and Peabody Holding.

Dated: New York, New York
April 5, 2013

Respectfully Submitted,

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